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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10

11 MICHAEL ZELENY,

12 Plaintiff,

13 vs.

14 GAVIN NEWSOM, *et al.*,

15 Defendants.
16
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Case No. CV 17-7357 JCS

Assigned to:

The Honorable Richard G. Seeborg

Discovery Matters:

The Honorable Thomas S. Hixson

**STIPULATION TO FURTHER
CONTINUE DATES DUE TO DELAYS
CAUSED BY CORONAVIRUS (COVID-
19) PANDEMIC**

Action Filed: December 28, 2017

Trial Date: TBD
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20 **A. Recitals**

21 1. The parties have worked diligently to complete discovery in this matter on the
22 current schedule and have completed all but three depositions.

23 2. On March 4, 2020, the Governor of the State of California declared a State of
24 Emergency for California due to the novel coronavirus (COVID-19) pandemic.

25 3. On March 13, 2020, the President of the United States declared a national
26 emergency due to the Coronavirus pandemic.

27 4. On that date, the parties stipulated to continue discovery deadlines and pretrial
28 deadlines in light of the pandemic and their need to complete limited discovery remaining.

1 Dkt. No. 122. The Court granted the parties' request pursuant to an Order dated March 17,
2 2020, extending the discovery cut-off to May 15, 2020. Dkt. No. 123.

3 5. The difficulties posed by the novel coronavirus have been more significant than
4 the parties anticipated at the time of their March 13, 2020 stipulation. As a result of the
5 limitations imposed by the novel coronavirus, the parties were unable to complete essential
6 discovery within the framework of Dkt. No. 123 and stipulated to a further extension of pre-
7 trial dates. The Court granted the parties' request on May 7, 2020, extending the discovery
8 cut-off to July 3, 2020. Dkt. No. 125.

9 6. The difficulties posed by the novel coronavirus continued to affect the course of
10 discovery, particularly limiting the availability for deposition of Chief Dave Bertini of the City
11 of Menlo Park and Alex McIntyre, former City Manager of Menlo Park who is now the City
12 Manager of the City of Ventura. As a result, the parties have scheduled Mr. McIntyre's and
13 Chief Bertini's depositions for end of July/beginning of August of this year, well past the
14 current fact discovery cut-off date.

15 7. In the meantime, the Court issued a general order directing the parties to engage
16 in resolution discussions (Dkt. No. 126) and postponed the date of the next status conference in
17 this case to October 29, 2020 (Dkt. No. 131).

18 8. Considering the foregoing, counsel have agreed to seek a further continuance of
19 pre-trial dates to complete the following remaining specific discovery proceedings:

- 20 a. Resumed deposition of Chief Dave Bertini, individually and as a Rule
21 30(b)(6) witness for the City of Menlo Park, now scheduled for August 7,
22 2020;
- 23 b. Resumed Rule 30(b)(6) deposition of New Enterprise Associates, to be
24 completed in accordance with the herein requested schedule;
- 25 c. Deposition of Alex McIntyre, former City Manager of Menlo Park, now
26 scheduled for July 31, 2020;
- 27 d. Deposition of Ivan Toews, former Land Development Engineer at the
28 City of Menlo Park, to be completed in accordance with the herein

requested schedule;

- e. The matter of further responses to Zeleny's interrogatories to Attorney General Becerra seeking Attorney General's interpretation of the phrase "authorized participant" as used in California Penal Code §§ 26375 and 26405(r). The parties have initiated a meet and confer process regarding these interrogatories and expect to continue the discussion next week.

9. Counsel submit that the below-proposed schedule will well align with the next status conference in this case because it contemplates completion of all discovery before the conference.

NOW, THEREFORE, all parties have agreed and stipulated as follows:

1. Subject to the Court's approval, the parties have agreed to continue discovery deadlines as follows:
 - a. Fact Discovery Cut-Off from July 3, 2020 to September 3, 2020, limited to those outstanding matters specified above;
 - b. The discovery motion cut-off shall run from the new discovery dates provided herein;
 - c. Expert Disclosures from July 10, 2020 to September 10, 2020;
 - d. Rebuttal Expert Disclosures from July 31, 2020 to October 1, 2020;
 - e. Expert Discovery Cut-Off from August 21, 2020 to October 22, 2020;
 - f. Dispositive Motion Hearings from September 17, 2020 to December 17, 2020.

It is SO STIPULATED.

Dated: June 19, 2020

Respectfully submitted,

s/ David Markevitch

David W. Affeld

Damion D. D. Robinson

David Markevitch

Affeld Grivakes LLP

Attorneys for Plaintiff Michael Zeleny

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2 Howard Rome Martin & Ridley LLP
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3 Dave Bertini

4 s/ John W. Killeen
John W. Killeen
5 Deputy Attorney General
California Department of Justice
6 Attorney for Defendant Xavier Becerra

7 **ATTESTATION PER LOCAL RULE 5-1**

8 I attest that each person whose electronic signature appears above has concurred in the
9 electronic filing of this joint document and has authorized the use of their electronic signatures.
10 Records supporting this concurrence are maintained by the filer and are available for inspection
11 if needed.

12 Dated: June 19, 2020

s/ David Markevitch
13 David Markevitch

PROOF OF SERVICE

I hereby certify that on June 19, 2020, I electronically filed the foregoing document using the Court's CM/ECF system. I am informed and believe that the CM/ECF system will send a notice of electronic filing to the interested parties.

s/ David Markevitch
David Markevitch